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**IN THE  
SUPREME COURT  
STATE OF MISSOURI**

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No. SC84220

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**JAMES OSWALD**  
Respondent,

v.

**NATIONAL FABCO MANUFACTURING,**  
Appellant.

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Transfer from the Missouri Court of Appeals, Eastern District

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**BRIEF OF RESPONDENT JAMES OSWALD**

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## **JURISDICTIONAL STATEMENT**

This is a Workers' Compensation case wherein Respondent James Oswald sought recovery from National Fabco Manufacturing and insurer Royal and SunAlliance for an injury occurring on March 3, 1997. On April 25, 2000, the Honorable John Howard Percy, Administrative Law Judge of the Division of Workers' Compensation, entered judgment in favor of Respondent Oswald, and awarding compensability of Oswald's claim for medical and disability benefits. Appellant appealed said judgment to the Labor and Industrial Relations Commission, which modified and affirmed the judgment by a two-to-nothing vote on January 30, 2001. Notice of Appeal was filed by Appellant to the Eastern District Court of Appeals on March 15, 2001, pursuant to the general appellate jurisdiction of the Missouri Court of Appeals, Article V, Section 3, Constitution of Missouri, as amended 1970. The Court of Appeals affirmed the decision of the Commission on October 9, 2001. Appellant thereafter filed a Motion for Rehearing and Application to Transfer to the Supreme Court of Missouri on October 24, 2001. After requesting and receiving Suggestions in Opposition to the Motion, the Court of Appeals granted transfer to the Supreme Court pursuant to Rule 83.02, based on the general interest and importance of the issue, as well as the need for re-examination of existing law on the issue.

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## **STATEMENT OF FACTS**

Respondent James Oswald (hereinafter “Oswald”) does not accept the facts offered by the brief of Appellant insofar as such facts are incomplete. Further, Appellant’s Statement of Facts contains argument, including such statements as: Oswald’s testimony took “some prodding,” (Brief of Appellant, p. 7), Judge Percy “correctly ruled,” (Brief of Appellant, p. 7), and “[u]nfortunately, Claimant never contacted Dr. Petkovich.” (Brief of Appellant, p. 8). Finally, Appellant’s Statement of Facts incorrectly states that “[Oswald] alleges that he suffered bilateral carpal tunnel syndrome as well as bilateral rotator cuff tears as a result of repetitive trauma.” (Brief of Appellant, p. 7). Oswald has never claimed bilateral shoulder injury, he has only claimed injury to his left shoulder. (Tr. 333-339). The following Statement of Facts is therefore offered by Respondent Oswald.

This matter was tried at the Division of Workers’ Compensation on January 19, 2000, before the Honorable John Howard Percy, Administrative Law Judge. The issues for resolution at trial were the questions of whether Oswald’s injuries were caused by repetitive trauma which arose out of and in the course of his employment; if so, which employer and insurer is liable; whether proper notice of injury was given to Southern Equipment Company; statute of limitations; reimbursement to National Fabco Manufacturing and Royal and SunAlliance Insurance Company; future medical care; and nature and extent of permanent partial disability. (Tr. 1-8).

Oswald worked as a Sheet Metal Worker since 1952. During those years, he worked for three separate employers. From October 8, 1952 through March 31, 1995, he worked for Southern Equipment Company. (hereinafter “Southern”). (Tr. 25). From April 17, 1995 through August 7, 1995, he worked for Quipco Products. (hereinafter “Quipco”). (Tr. 24). And from August 8, 1995 to March 3, 1997, he worked for National Fabco Manufacturing. (hereinafter “Fabco”). (Tr. 23). On March 3, 1997, he was terminated by Fabco, three weeks before he was set to retire. (Tr. 24).

Oswald’s various employers changed their workers’ compensation insurance carriers on several occasions during Oswald’s tenure. (Tr. 332). Southern was insured as follows: Security Insurance Company from February 9, 1990 to April 1, 1993; Hartford Insurance Company from April 1, 1993 to April 1, 1994; and Virginia Surety from April 1, 1994 to May 1, 1995. (Tr. 332). Fabco was insured as follows: CGU Insurance from May 16, 1995 to May 16, 1996; and Royal and SunAlliance from May 16, 1996 to May 16, 1998. (Tr. 332).<sup>1</sup>

Oswald’s employment with both Southern and Fabco consisted of working from eight to ten hours per day. (Tr. 25, 31). He described the work as consisting of transferring drawings from blueprints to pieces of sheet metal, using a T-square and a scribe. (Tr. 25-29). He testified that he would mark the sheet metal by holding the T-square with one hand and applying pressure on the scribe with his other hand. (Tr. 63-64). In so doing, he scratched a line on the metal so that it could be cut. These duties also required him to lift and carry various

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<sup>1</sup>/Quipco is an Illinois entity, and therefore was not a party at trial.

sizes and weights of sheet metal.<sup>2</sup> (Tr. 27). At other times his work required him to use drills. (Tr. 30-31).

In the late 1980's or early 1990's Oswald began developing symptoms of hand pain and numbness while working for Southern. (Tr. 32, 56). He missed no time from work, though his symptoms required him to “rub his hands” from time to time. (Tr. 58). He sought the advice of his primary care physician, Dr. Carey Delcau, who referred him to Dr. Frank Petkovich for evaluation. (Tr. 34, 241). Dr. Petkovich, an orthopedic surgeon, first saw Oswald on November 5, 1990. At that time he evaluated Oswald for two separate problems: one being the carpal tunnel problem, and the other being a traumatic injury which had earlier occurred to the right shoulder. (Tr. 32-33, 232). As part of his evaluation, Dr. Petkovich ordered Oswald to undergo further testing with Dr. Daniel Phillips. (Tr. 34, 232).

Dr. Phillips, a neurologist, evaluated Oswald on November 17, 1990. He performed an EMG and nerve conduction study, both of which were consistent with a bilateral carpal tunnel syndrome that was worse on the right side. (Tr. 35, 242). Oswald then returned to Dr. Petkovich on November 30, 1990, to discuss the test results and his treatment options. (Tr. 232). Oswald, however, received no further medical care for his hand or wrist complaints over the next five to six years. (Tr. 36). And during this time, he was unaware of the cause of his condition. (Tr. 36).

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<sup>2</sup>/When Oswald began working for Quipco his duties were similar. (Tr. 29). However, for a period of time, he worked in a role of creating drawings for the sheet metal workers, a job in which he was using pencil and paper, instead of a scribe and sheet metal. (Tr. 29-30).

After the evaluations in 1990, Oswald's condition gradually worsened. (Tr. 37, 59). He developed more pain, and more numbness, with symptoms which now awoke him during the night. (Tr. 37). And in approximately 1995 he began developing symptoms of pain in his left shoulder -- symptoms which also worsened over time. (Tr. 36).

Oswald eventually returned to the office of Dr. Phillips on December 13, 1996 because of the worsening symptoms. (Tr. 37, 250). Another EMG and another nerve conduction study was performed, and these showed a worsening of his condition. (Tr. 250-251). Among other results, the bilateral median motor terminal latencies had worsened, and the sensory responses across the right carpal tunnel had become unobtainable. (Tr. 250-251). Dr. Phillips recommended splints and referral to an orthopedic surgeon, and it was at this time that Dr. Phillips advised Oswald that his condition was related to the work he performed. (Tr. 250, 41).

After Oswald's 1996 evaluation with Dr. Phillips, he spoke with his supervisor at Fabco, Mr. John Gates. (Tr. 38). He advised Mr. Gates of what Dr. Phillips had told him, and how he needed to make a claim for a work-related injury. (Tr. 38-41). Mr. Gates accordingly scheduled him for a medical evaluation with Dr. Petkovich on December 30, 1996. (Tr. 42-43, 257-258). At that visit Dr. Petkovich recommended that Oswald undergo carpal tunnel surgery and a cortisone injection in his shoulders. (Tr. 257-258).

Fabco terminated Oswald's employment on March 3, 1997. (Tr. 65). Between the onset of his symptoms in 1990 and the date of his termination, Oswald missed no time from work due to the symptoms in his hands, wrists, or left shoulder. (Tr. 65). Similarly, no doctor had ever recommended that he take time off of work. (Tr. 66).

Fabco's worker's compensation insurer, Royal and SunAlliance, then switched Oswald's medical care to Stephen Benz, M.D., an orthopedic surgeon. (Tr. 340-341). Dr. Benz evaluated Oswald on August 20, 1997 and recommended carpal tunnel surgery on the wrists, along with an arthrogram of the left shoulder. (Tr. 43, 264-265). Oswald thereafter underwent surgery the right wrist on October 1, 1997, and the left wrist on November 19, 1997. (Tr. 44, 274-275, 285-286). On March 19, 1998, he underwent surgery on the left shoulder. (Tr. 44, 296-297).

Oswald testified that he continues to have symptoms in both hands and wrists, including a locking sensation in two of his fingers. (Tr. 47-50). He also continues to have pain in his left shoulder area. (Tr. 45-47). He testified that he had no other injuries to his hands, wrists, or left shoulder in the past. (Tr. 50).

Dr. Petkovich testified by way of deposition. (Tr. 169). He stated that he diagnosed Oswald with bilateral carpal tunnel syndrome and bilateral rotator cuff tendinitis. (Tr. 182). He stated that Oswald's history of physical work, over his life, caused these conditions. (Tr. 183). He did not attribute Oswald's problems to any specific incident or series of incidents with any particular employer, but rather, he said that he was simply stating that Oswald's problems were caused over a period of time. (Tr. 207). He attributed the problems to the performance of physical labor. (Tr. 213-214).

Dr. David Volarich also testified by way of deposition. (Tr. 99). He diagnosed Oswald as suffering from the following conditions as a result of the repetitive nature of his work as a sheet metal worker: overuse syndrome, right upper extremity, most consistent with median

nerve entrapment at the wrist, or carpal tunnel syndrome, and ulnar nerve entrapment at the wrist, Guyon's canal stenosis; second, status post surgical decompression, right wrist carpal tunnel and Guyon's canal; third, overuse syndrome, left upper extremity, most consistent with median nerve entrapment at the wrist, or carpal tunnel syndrome, and ulnar nerve entrapment at the wrist, Guyon's canal stenosis; fourth, status post decompression, left wrist carpal tunnel and Guyon's canal; and fifth, left shoulder rotator cuff tear with impingement and biceps tendon rupture, status post surgical repair. (Tr. 119). Dr. Volarich testified that Oswald's work as a sheet metal worker was a substantial contributing factor in the cause of these conditions. (Tr. 119-120).

***POINTS RELIED ON***

**I.**

**THE LABOR AND INDUSTRIAL RELATIONS COMMISSION DID NOT ERR IN RULING THAT FABCO AND IT'S INSURER, ROYAL AND SUNALLIANCE, ARE RESPONSIBLE FOR PROVIDING WORKERS' COMPENSATION BENEFITS FOR OSWALD'S OCCUPATIONAL DISEASE, BECAUSE OSWALD FILED HIS CLAIM FOR COMPENSATION ON MARCH 3, 1997 AFTER WORKING FOR FABCO FOR OVER EIGHTEEN MONTHS, AND SECTION 287.063.2 OF THE MISSOURI LAW HOLDS THAT THE LAST EMPLOYER TO EXPOSE THE EMPLOYEE TO THE OCCUPATIONAL HAZARD PRIOR TO THE FILING OF THE CLAIM IS THE RESPONSIBLE PARTY.**

*Section 287.495 RSMo. 1994.*

*Cahall v. Cahall*, 963 S.W.2d 368 (Mo.Ct.App. 1998).

*Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413 (Mo.Ct.App. 1988).

*Miller v. Wefelmeyer*, 890 S.W.2d 372 (Mo.Ct.App. 1994).

*Kintz v. Schnucks Markets, Inc.*, 889 S.W.2d 121 (Mo.Ct.App. 1994)

*Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195 (Mo.Ct.App. 1990).

*Section 287.063.2, RSMo. 1993.*

*Johnson v. Denton Construction Co.*, 911 S.W.2d 286 (Mo.banc 1995).

*8 CSR 50-2.010 (7).*

*Section 287.067.7, RSMo. 1993.*

*Arbeiter v. National Super Markets, Inc.*, 990 S.W.2d 142 (Mo.Ct.App. 1999).

*Cuba v. Jon Thomas Salons, Inc.*, 33 S.W.3d 542 (Mo.Ct.App. 2000).

*Walker v. Klaric Masonry, Inc.*, 937 S.W.2d 219 (Mo.Ct.App. 1996).

*White v. Scullin Steel Co.*, 435 S.W.2d 711 (Mo.Ct.App. 1968).

*Miller v. Unitog Company*, 965 S.W.2d 373 (Mo.Ct.App. 1998).

*Mayfield v. Brown Shoe Company*, 941 S.W.2d 31 (Mo.Ct.App. 1997).

## ***ARGUMENT***

### **I.**

**THE LABOR AND INDUSTRIAL RELATIONS COMMISSION DID NOT ERR IN RULING THAT FABCO AND IT'S INSURER, ROYAL AND SUNALLIANCE, ARE RESPONSIBLE FOR PROVIDING WORKERS' COMPENSATION BENEFITS FOR OSWALD'S OCCUPATIONAL DISEASE, BECAUSE OSWALD FILED HIS CLAIM FOR COMPENSATION ON MARCH 3, 1997 AFTER WORKING FOR FABCO FOR OVER EIGHTEEN MONTHS, AND SECTION 287.063.2 OF THE MISSOURI LAW HOLDS THAT THE LAST EMPLOYER TO EXPOSE THE EMPLOYEE TO THE OCCUPATIONAL HAZARD PRIOR TO THE FILING OF THE CLAIM IS THE RESPONSIBLE PARTY.**

The standard of review before this Court is clear. This Court is to review the Labor and Industrial Relations Commission's (hereinafter "Commission") decision pursuant to Section 287.495 RSMo 1994, and is bound to affirm the Commission's award if it is supported by competent and substantial evidence on the whole record. *Cahall v. Cahall*, 963 S.W.2d 368, 371 (Mo.Ct.App. 1998); citing *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415 (Mo.Ct.App. 1988). The courts have consistently held that the inquiry is limited to whether the Commission could have reasonably made such findings and reached the result that it did. *Id.* An award of the Commission may only be disturbed when it is not supported by substantial evidence or is clearly contrary to the overwhelming weight of the evidence. *Id.* This Court is

to defer to the Commission on issues concerning credibility and weight to be given to conflicting evidence and testimony. *Id*; see also *Miller v. Wefelmeyer*, 890 S.W.2d 372, 375 (Mo.Ct.App. 1994). The Court does review matters of law independently. *Id*; see also *Kintz v. Schnucks Markets, Inc.*, 889 S.W.2d 121, 123 (Mo.Ct.App. 1994). However, all provisions of the Workers' Compensation Act must be liberally construed to resolve all doubts in favor of the employee. *Id*; see also *Fischer v. Archdiocese of St. Louis*, 793 S.W.2d 195, 198 (Mo.Ct.App. 1990).

The matter at hand involves application of section 287.063.2 of the Missouri law. This provision, otherwise known as the “last exposure rule,” states:

[t]he employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.

*Section 287.063.2, RSMo. 1993.* The Missouri Supreme Court's interpretation of this rule is laid out in *Johnson v. Denton Construction Co.*, 911 S.W.2d 286 (Mo.banc 1995), where the Court found that §287.063.2 directs that: “[t]he starting point in applying the last exposure rule is that the employer liable for compensation is the last employer to expose the employee to the occupational hazard prior to the filing of the claim,” because the statute employs the term “for which claim is made.” *Johnson*, 911 S.W.2d at 288. The “claim” that was referred

to was the Missouri workers' compensation Claim for Compensation form.<sup>3</sup> *Ibid.* Employing this logic, the court found employer Denton liable for the totality of Johnson's claim, because Denton was the employer in whose employment Johnson was last exposed to the hazard of the disease "prior to filing his claim." *Ibid.*

The Commission properly followed the Supreme Court's ruling in deciding the case at hand. Oswald last worked on March 3, 1997, and his claim for compensation form was filed on March 12, 1997. (Tr. 24, 333). The last employer prior to filing this claim was Fabco, and Fabco's insurer at the time was Royal and SunAlliance. (Tr. 23, 332). Since the evidence showed that Oswald was last exposed to the hazard of the disease on March 3, 1997,<sup>4</sup> liability therefore lies with employer Fabco and Royal and SunAlliance. And since liability lies with these parties, the Commission's Award was correct. *Ibid.*

Appellant incorrectly states that the analysis does not stop at this point. There is only one occasion in which the Commission is allowed to find that liability lies with an employer who employed a claimant prior to the filing of the claim, and that is in those occasions where the claimant worked for the last employer for less than three months before filing his claim. Section 287.067.7 of the Missouri Statutes, otherwise known as the "three month rule," states:

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<sup>3</sup>/See also 8 CSR 50-2.010 (7).

<sup>4</sup>/Appellant admits in its Brief that "[Oswald] suffers from an occupational disease/accident as a result of exposure to repetitive trauma through his employment." (Brief of Appellant, p. 12). Appellant states: "[a]ll doctors have stated that it is [Oswald's] job duties as a sheet metal worker that has (sic) caused his condition." (Brief of Appellant, p. 21).

[w]ith regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence establishes that the exposure to the repetitive motion with a prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

*Section 287.067.7, RSMo. 1993.* Case law has interpreted this section as meaning that the last employer is *banned* from claiming a prior employer should be liable for an employee's occupational disease, except in those circumstances where the employee has worked for the last employer for less than three months before filing his claim. *Arbeiter v. National Super Markets, Inc.*, 990 S.W.2d 142, 146 (Mo.Ct.App. 1999). See also *Cuba v. Jon Thomas Salons, Inc.*, 33 S.W.3d 542, 545-547 (Mo.Ct.App. 2000); *Walker v. Klaric Masonry, Inc.*, 937 S.W.2d 219, 220 (Mo.Ct.App. 1996). In fact, *Arbeiter* establishes a *presumption* that the last employer is the responsible employer, stating:

[u]nless the three month exception is applicable, the presumption that liability attaches to the last employer to expose the employee to the hazard prior to the filing of the claim is conclusive and *causation is not to be considered.* (*Emphasis supplied*).

990 S.W.2d at 145-146.

In the case at hand, Oswald worked for the last employer, Fabco, for eighteen months, three weeks and three days before filing his claim. (Tr. 23-24). Therefore, the “three month

exception” of §287.067.7 does not apply, and therefore Fabco is *presumptively* the responsible employer. *Id.* Given this, it is improper to interject a discussion of causation into the dialogue concerning which of Oswald’s past employers is liable. *Id.* And given this, the Commission properly ruled that liability lies with those parties presumptively liable under the law: Fabco and Royal and SunAlliance.

The last exposure rule is a rule of convenience. *White v. Scullin Steel Co.*, 435 S.W.2d 711, 716 (Mo.Ct.App. 1968). It’s purpose is to stop any delay in the provision of medical care by focusing on the true purpose of the law, which is to provide benefits to injured workers in the quickest and simplest way possible, rather than involving the Courts “in a search for an amorphous causation . . . futile due to the inexactness of medical science . . .” *Ibid.* And yet, despite the admonitions of the courts against delving into futile and wasteful discussions of causation, Appellant insists that this Court should look beyond the date the claim for compensation was filed by examining the issue of medical causation.

Appellant’s assertions assume that Oswald’s condition has existed for years -- unchanged -- prior to his filing of a claim for compensation. In actuality, the facts show a pattern of worsening in Oswald’s symptoms and conditions over the years, leading to the need for surgery while working for Fabco. It should be kept in mind that the decision as to whether or not to perform surgery is a subjective decision in that the injured worker must decide when the time is right for him to have surgery. For instance, Dr. Volarich was asked by Appellant’s attorneys for the criteria which leads to the conclusion that a person needs surgery. He did not

say “a positive EMG.” Nor did he say “a positive Tinel sign,” or “a positive nerve conduction study.” He said:

[w]hen it begins to affect their daily life, when they’re being awakened all night long and can’t sleep. They have trouble functioning at home. Have trouble doing their job. You know, that sort of thing. When it really begins to impact their daily living is when I make the recommendation they should consider surgery. That’s assuming, as well, that all conservative measures failed to improve their symptoms.

(Tr. 137-138).

The evidence shows that after Oswald first saw Dr. Petkovich in 1990, he did not know what was the cause of the symptoms in his hands, as no doctor ever discussed it with him. (Tr. 36). It also shows that he thereafter worked for six full years without missing a day of work. (Tr. 65). Further, he had no medical treatment during that six years, though his symptoms were gradually worsening. (Tr. 37, 59). During that time his grip strength worsened, causing him to have difficulty holding onto items. (Tr. 37). His sleep was becoming less restful. (Tr. 37). And in 1996, during his tenure with Fabco, he realized he needed to see a physician for medical care. (Tr. 38). In other words, it was in 1996 that Oswald realized the “impact on daily living” which Dr. Volarich discussed as being the determinative factor in determining the need for surgical care. (Tr. 137-138).

This worsening of Oswald’s condition is documented not only by his subjective complaints, but also by his *objective* medical testing. For instance, the EMG and nerve

conduction testing showed worsening measurements between the years 1990 and 1996. In 1990 Dr. Phillips said that while it showed problems in both wrists, it was worse on the right. (Tr. 242). Then, in 1996 it had progressed to the point that the sensory responses in the right wrist were completely unobtainable, and those in the left wrist showed “significant slowing.” (Tr. 250).

Appellant’s reliance on the language of *Arbeiter* is also misplaced because *Arbeiter* requires the last employer to prove that the previous employment is *the substantial contributing factor* to the injury in order to shift liability to an earlier employer. 990 S.W.2d at 146. That was not done here. Only one doctor testified directly to this issue, Dr. David Volarich; and he did not place substantive blame on the work performed by Oswald prior to his employment with Fabco.<sup>5</sup> Rather, he placed blame on Oswald’s exposure to the hazard of the disease over the entirety of his career -- including that of Fabco. He stated:

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<sup>5</sup>/Appellant incorrectly states that Oswald’s work at Southern was the cause of his condition, citing to the reports of Dr. Phillips. (Brief of Appellant, p. 21). Dr. Phillips never testified in this matter and was never asked whether the work at Southern was “the substantial factor” in the cause of his condition. He did state in his report, however: “I therefore cannot conclude at this point that his employment at Southern Equipment is primarily responsible for his development of carpal tunnel even back then, this particular component would need to be further investigated. (Tr. 262).

[i]t's my opinion that the repetitive nature of Mr. Oswald's work leading up to 3/3/97, particularly his tasks as a sheet metal fabricator laying out templates, drawing lines, and repetitive lifting of steel, is *the substantial contributing factor* causing the development of bilateral upper extremity carpal tunnel syndrome and Guyon's canal stenosis, as well as the left shoulder rotator cuff tear and biceps tendon tear that required surgical repair. (*emphasis added*). (Tr. 119-120, 134-135).

The other doctors seemed to agree, such as Dr. Petkovich, who testified that:

[i]t was my opinion that basically his bilateral carpal tunnel syndromes and that his bilateral rotator cuff tendonitis were a result basically of just repetitive heavy work *all of his life*. (*emphasis added*). (Tr. 183).

Similarly, Dr. Phillips said in his report:

I therefore cannot conclude at this point that his employment at Southern Equipment is primarily responsible for his development of carpal tunnel even back then, this particular component would need to be further investigated. (Tr. 262).

And so, even if the three month rule were to be applicable to the case at hand, the opinions of the medical experts reveal that Fabco has failed in its burden of over-coming the presumption that the employment with Fabco was the substantial contributing factor in causing Oswald's injury. *Miller v. Unitog Company*, 965 S.W.2d 373, 375 (Mo.Ct.App. 1998); *Mayfield v.*

*Brown Shoe Company*, 941 S.W.2d 31, 35 (Mo.Ct.App. 1997). Liability therefore rests with Fabco and Royal and SunAlliance.

Fabco was the last employer to expose Oswald to the hazard of his disease prior to the filing of his claim for compensation. Fabco is therefore presumed to be the responsible parties. Appellant's attempts to interject the issue of causation into this "rule of convenience" should be disregarded as improper and "a search for an amorphous causation . . . futile due to the inexactness of medical science . . ." *White*, 435 S.W.2d at 716. The decision of the Labor and Industrial Relations Commission is supported by substantial evidence, and the law, and should be affirmed.

## CONCLUSION

The Labor and Industrial Relations Commission correctly ruled that Fabco and Royal and SunAlliance are the parties responsible for providing benefits to Oswald under the Missouri Workers' Compensation Law for the injury he sustained to his hands, wrists and left shoulder. The evidence proved that these injuries were caused by the repetitive nature of Oswald's work, and the law holds that the last employer to expose the employee to the hazards of the injury prior to the filing of the claim for compensation shall be responsible. Fabco was that employer, and the Commission therefore properly found it liable under the Law.

Respectfully submitted,

SCHUCHAT, COOK & WERNER

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**CERTIFICATE OF SERVICE**

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brief SC84220 OSWALD sub res.wpd